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In the Interview Summary form dated July 2, 1999, the Examiner asserted that the Applicants "argued that Johnson teaches a medium selective for only a single microorganism, not for a group of microorganisms, and therefore does not teach a uropathogenic specific medium as defined on page 12 of the specification." The Applicants point out that they did not make this argument. Instead, the Applicants specifically argued, as they have previously, that Johnson teaches no particular media at all, only that media are to be used in the device disclosed by Johnson." (See, e.g., Response to Office Action, June 3, 1999, page 3).

1. Claims 20-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson in view of Sanders, and further in view of Brocco.

The Edberg reference does not, alone or in combination with Johnson, Sanders, or Brocco, render obvious any claim in the present application.

The Examiner stated in the Supplement to Interview Summary Form mailed July 2, 1999, at page 2, "This reference [Edberg] is being supplied to show that a medium selective for gram negative bacteria was known in the prior art at the time of invention."

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It is irrelevant to the patentability of the claimed invention whether Edberg discloses a medium selective for gram negative bacteria because the subject matter of this invention is media specific for primary gram negative uropathogens, which is not specifically taught or suggested by Edberg. There is no enzyme known to be metabolized by all primary gram negative uropathogens which is not also common to various other bacteria. Therefore, this invention is separately patentable in view of Edberg. Edberg does not cure the deficiencies of the \$103 rejection previously established by the Applicants.

Edberg does not disclose a uropathogenic specific medium (as that term is defined on page 12 of the specification as a medium which allows only the growth of the "primary gram negative urinary pathogens," which is defined at page 10 of the specification as those organisms which cause at least 85-90% of the human and veterinary urinary tract infections). The Examiner points to Col. 6, lines 41-62 of Edberg. However, this passage refers to a media for selecting E. coli and gram negative bacteria, not a medium which specifically detects the primary gram negative urinary pathogens, which are the subject of this invention.

The media of the present invention selects against many gram negative bacteria which are not primary gram negative uropathogens. For example, the media of the present invention

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will not allow the growth of Bacteroides, Legionella, Campylobacter, Helicobacter, or Neisseiria. All are gram negative bacteria which are not primary gram negative uropathogens and will not grow in the media of the present invention. This is an important feature since some of these bacteria may find their way into a urine sample by contamination from environmental sources. Therefore, merely identifying a media which selects for some or all gram negative bacteria does not defeat the novelty of the present invention, which claims media which detect only the presence of the primary gram negative uropathogens (those bacteria which cause 85-90% of human and veterinary urinary tract infections).

Therefore, under established principles, the Examiner has failed to make a prima facie case of obviousness as required by MPEP § 2142. The cited references, alone or in any appropriate combination, do not teach or suggest a media which selects for the primary gram negative uropathogens, as presently claimed. The Examiner has not demonstrated how the cited prior art could be modified to produce media or methods for selecting for the discrete and clinically important class of primary gram negative uropathogens, nor a reasonable expectation of success in doing so. The cited references therefore do not enable a person of ordinary skill to make and use the claimed invention.

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There is no reference of record which teaches or suggests the ability to select for the discrete and clinically important class of primary gram negative uropathogens.

For these reasons, the rejection should be withdrawn and the Examiner is respectfully requested to pass the claims to allowance.

Conclusion

In view of the above, the Applicants submit that the claims are in condition for allowance. The Applicants respectfully request that they be allowed and passed to issue.

If the amount enclosed is incorrect, please charge or credit Deposit Account No. 12-2475 for the appropriate amount.

Respectfully submitted,
LYON & LYON

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